

# **Exhibit E**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRUMP INSURANCE SERVICES, INC.,

Plaintiff,

vs.

No. C-07-4636 MMC

MICHAEL P. MCGRATH, an individual,  
ALL RISKS, LTD., a corporation,  
and Does 1 through 50, inclusive,

Defendants.

CERTIFIED  
COPY

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VIDEOTAPED DEPOSITION OF MICHAEL P. McGRATH

San Francisco, California

Wednesday, April 30, 2008

Reported by:

SUZANNE F. BOSCHETTI

CSR No. 5111

Job No. 85930A

00024

1 A. Yes.

2 Q. Okay. And just confirm to me that e-mail  
3 address, mike.mcgrath@allrisks.com is accurate as --

4 A. Yes.

5 Q. -- of that time?

6 A. Yes.

7 Q. But again, you don't recall that you ever  
8 received this e-mail, Exhibit 3, correct?

9 A. No.

10 Q. My statement was correct?

11 You don't recall ever receiving --

12 A. I don't recall.

13 Q. Thank you. Okay.

14 Have you now described for me the documents  
15 that you reviewed when you prepared for this deposition?  
16 You had mentioned reviewing e-mails, your All Risks  
17 employment contract, your Crump 1996 agreement.

18 A. Yes.

19 Q. Have we now covered everything that you  
20 reviewed?

21 A. Yes.

22 Q. Okay. In connection with this lawsuit, you  
23 were asked to produce your Crump employment contract.

24 Do you remember being asked to produce that in  
25 a document request?

00025

1 A. Yes.

2 Q. Okay. And my recollection is that you

3 responded that you did not have a copy, correct?

4 A. Correct.

5 Q. Did you at any point in time keep a copy of

6 your Crump 1996 employment contract?

7 A. No.

8 MR. STERN: Let's mark as Exhibit 4 a copy of

9 what's called Memorandum of Agreement dated June 7,

10 1996. It bears the number C001 through 06.

11 (Deposition Exhibit 4 marked by the court

12 reporter.)

13 BY MR. STERN:

14 Q. Would you confirm to me that this is the

15 employment contract that you had with Crump?

16 A. Yes, that is the contract I had with Crump.

17 Q. And that's your signature on page 6, correct?

18 A. Correct.

19 Q. Was this entered into on or about the date

20 that's indicated on the first page, that is, June 7th,

21 1996?

22 A. Yes.

23 Q. And you understood that this set forth the

24 terms of the employment during the entire period that

25 you were with Crump except as amended by supplemental

00026

1 amendments changing your compensation; is that correct?

2 MS. RUTTER: Objection to the extent it's

3 overbroad and to the extent it calls for a legal

4 conclusion.

5 BY MR. STERN:

6 Q. You can answer.

7 A. Don't know.

8 Q. Did you have any understanding one way or other

9 as to the terms of your employment?

10 MS. RUTTER: Objection. It's overbroad.

11 BY MR. STERN:

12 Q. You can answer.

13 A. If you can repeat the question, please?

14 Q. Sure.

15 Did you have any understanding as to what the

16 terms of your contract --

17 A. Yes.

18 Q. -- were with Crump?

19 A. Sorry to interrupt. Yes.

20 Q. Let me -- let me take it a little slower and

21 see if maybe we can move through this.

22 When did you begin with Crump?

23 A. June 7th, 1996.

24 Q. And at that time, you entered into the written

25 agreement that we see, Memorandum of Agreement,

00047

1 THE WITNESS: No.

2 BY MR. STERN:

3 Q. Okay. And -- and did you understand that to be  
4 referring to -- and let me point out, at the beginning  
5 of the paragraph, it begins by saying "all records,  
6 files, manuals, lists of customers" and then it goes on  
7 with more.

8 Did you understand that to be what was being  
9 referred to as the property?

10 A. Yes.

11 Q. Okay. After you left -- let me back up. Start  
12 over.

13 When you left Crump, did -- did you have in  
14 your possession anything that was, under this  
15 paragraph 11, property of Crump?

16 A. Yes.

17 Q. What did you have?

18 A. I had old -- I worked at home, on Fridays  
19 usually, and I had old Win Broker lists of accounts.

20 Q. At home?

21 A. Yes.

22 Q. Did you have anything else covered by this  
23 paragraph as of that time?

24 A. No.

25 Q. What did you do with those lists of accounts?

00048

1 A. All recycled.

2 Q. What does that mean?

3 A. I got rid of them.

4 Q. Were these -- how were they kept?

5 A. In a huge pile on my right -- on my desk on the  
6 right side.

7 Q. So they were -- they were printed out on paper?

8 A. Yes.

9 Q. Did you have them in any other medium such as  
10 in a computer?

11 A. No.

12 Q. When you say recycled, how was that handled?

13 A. In my blue thing outside.

14 Q. Oh, they were just thrown away into --

15 A. Yeah.

16 Q. -- the recycling --

17 A. Yes.

18 Q. Through the tra- -- your normal trash --

19 A. Yeah.

20 Q. -- pickup?

21 A. Yes.

22 Q. Okay. Was anything done to shed them or  
23 otherwise make them --

24 A. No.

25 Q. -- nondis- -- nonunderstandable?

00049

1 A. No.

2 Q. Describe for me what these were, the -- the Win

3 Broker lists?

4 A. They have a -- if I recall correctly, they have

5 a list of the account, the effective date, the premium.

6 Q. So the account. Effective date of what?

7 A. When it's effective, when the account is

8 effective. The premium is on it with the commission

9 that was made the prior year.

10 And what I used these lists for when I was

11 working was so I know, if somebody called me, one of my

12 clients, I would have that readily available. Because

13 you could not get Win Broker at home unless you had your

14 laptop, which I never brought my laptop home. I kept it

15 in the office.

16 Q. So when you say it had the account, the

17 effective date, premium, the commission, effective date

18 of an insurance policy?

19 A. Of the -- yes, yes.

20 Q. And would it also show an expiration date?

21 A. The effective date, expiration, that'd be the

22 same.

23 Q. The same but a year later?

24 A. Yeah. So it'd be-- it would show up 8/1/06.

25 Then that means I know it comes up 8/1/07.

00050

1 Q. For renewal?

2 A. Yes.

3 Q. And you say it -- it reflected -- did it  
4 reflect the types of insurance that were covered?

5 A. Yes. Yes.

6 Q. So can you give me an example of the  
7 information one particular type of -- of customer might  
8 have that you would have on Win Broker?

9 A. Yeah. It would say DIC including earthquake.

10 Q. DIC meaning --

11 A. I'm sorry. Difference in conditions. It's  
12 just -- it's an acronym for a -- for an earthquake  
13 policy.

14 Q. Okay. It would have the name of your insured?

15 A. Yes.

16 Q. Would it show who the retail broker was that  
17 provided --

18 A. Yes.

19 Q. -- that?

20 A. Yes.

21 Q. So you had that information.

22 With respect to the retail broker, did it just  
23 show their name, or would it show some contact  
24 information such as an address or a phone number?

25 A. Just their name.

00051

1 Q. Okay. It would show the effective date of the  
2 particular coverage, listing the type of coverage,  
3 correct?

4 A. Mm-hmm.

5 MS. RUTTER: Yes. Is that a yes?

6 THE WITNESS: Oh, yes.

7 MR. STERN: Thank you.

8 MS. RUTTER: Answer audibly.

9 BY MR. STERN:

10 Q. The premium and the commission for the prior  
11 year that was then in effect --

12 A. Yes.

13 Q. -- correct?

14 Any other information that was included?

15 A. No.

16 Q. Was that information essentially everything you  
17 would need to know to know what that particular customer  
18 had in the way of insurance that you had for that  
19 customer at Crump?

20 A. No.

21 Q. What wasn't included?

22 A. The values.

23 Q. Of the underlying property?

24 A. Yeah, the values of the -- the actual values of  
25 the account, the coverages.

00052

1 Q. The coverages were not included in that?

2 A. No. I wouldn't know if they had building laws.

3 I wouldn't know if they had -- if they had EQSL. I'd

4 only know that they had earthquake or maybe they had

5 flood.

6 Q. Why would -- did Win Broker not contain the

7 information on all the coverage that that customer had

8 through Crump?

9 A. Win Broker might have but not the expiration

10 lists.

11 Q. Oh, this is what you call an expiration list?

12 A. Yes.

13 Q. What is that?

14 A. Where it shows that the -- it'll show the

15 account, what -- like a -- for instance -- what's today?

16 Today we are in April. It will show my -- it will show

17 May. That's an expiration list. What I called it. I

18 don't know if Crump called it that, but I used it as,

19 oh, I got nine accounts coming up in May. And so if I

20 was at home and somebody called me on it or sent me an

21 e-mail, I know when it came up.

22 Q. When you say you had these, did you keep --

23 well, about how high a stack was it when you --

24 A. Oh.

25 Q. -- got rid of it?

00053

1 A. Maybe this high.

2 Q. Okay. You -- describe for the court

3 reporter --

4 A. Sure.

5 Q. -- what you're showing me.

6 A. About two and a half, three inches.

7 Q. And what would that represent in terms of the  
8 time period, the number of months?

9 A. Probably the last six -- six months maybe.

10 Q. So as -- and when did you actually get rid of  
11 these lists that you had from Crump?

12 A. Either the day before I started at All Risks or  
13 the day of All Risks.

14 Q. Did you make any use of them prior to the time  
15 that you threw them away, any use of them with respect  
16 to All Risks?

17 A. No.

18 Q. So, for instance, you didn't look at them to  
19 try to figure out which accounts you might want to  
20 contact when you went to All Risks?

21 A. No.

22 Q. Did you -- when -- when, prior to throwing them  
23 out, did you last look at any of that list, what you  
24 call the expiration list from Win Broker?

25 A. Probably early May.

00054

1 Q. Why do you think that's when you last looked at  
2 them?

3 A. Because I think that was the last day I worked  
4 at home for Crump.

5 Q. I thought you said you worked usually on  
6 Fridays at home?

7 A. Yes.

8 Q. Was there some reason you didn't do it in  
9 May 2007 other than the first week -- well, I'm sorry --  
10 other than in early May?

11 A. I recall I went to Hawaii for a week in May,  
12 and my memory serves me, I do not believe I would have  
13 worked from home when I was going to be out ten days. I  
14 usually -- I wouldn't be at home 'cause I wouldn't --  
15 then I'm home way too much, and then going on vacation  
16 for eight or nine days wouldn't make any sense.

17 Q. I -- I brought with me a copy of a calendar  
18 that is for 2007. Why don't I hand this to you. We  
19 don't need to mark it.

20 A. Okay.

21 Q. And I will just confirm for you, you'll note  
22 2007, June 4th was a Monday, and that -- on this  
23 calendar, and that is, to the best of your recollection,  
24 accurate, correct?

25 A. Yes.

00059

1 "Employee further agrees that upon  
2 termination hereunder, and for a period of  
3 one year hereafter [sic], he will not  
4 disclose or make any use of such confidential  
5 information without the prior written consent  
6 of Crump."

7 Again, just to put it in context, you don't  
8 recall there being any questioning of you by anyone at  
9 All Risks as to whether you had any continuing  
10 obligations to Crump after you were to terminate with  
11 Crump?

12 A. I don't recall.

13 Q. Did -- was there any discussion at all with All  
14 Risks about whether or not you were entitled to use any  
15 information that you had from Crump if you went over and  
16 became employed by All Risks?

17 A. No. The only thing that All Risks said to me  
18 was any information -- 'cause they have hired a lot of  
19 people from other brokerages, high-powered brokers  
20 across the country -- was any information I had prior to  
21 them -- me starting with them, make sure it was not in  
22 any -- in my possession.

23 Q. Who told you that?

24 A. Nick Cortezi and Matt Nichols.

25 Q. Tell me, as best you recall, what you were told

00060

1 with respect to that.

2 A. Sure. Just to make sure I did not have

3 anything because, as a wholesale broker, you don't need

4 anything because most of the accounts are in people's

5 heads anyway. And you only have a limited number of

6 retailers, so what Matt and Nick let me know on the

7 conference call that I had with them sometime in May --

8 I don't recall the date -- May of 2007 is any

9 information I had, to make sure that I didn't have it

10 when I started with All Risks. And the reason they said

11 that is because I was awarded Broker of the Year in 2007

12 by Crump, and even though they didn't say this, I

13 believe they knew that or they had a feeling that Crump

14 would not just let me walk out the door.

15 Q. And did you -- well, you told us that you had

16 the Win Broker information at home and you got rid of

17 that.

18 Was there any other information that you had,

19 not necessarily at home, but that you had in your

20 possession with respect to Crump information?

21 A. No.

22 Q. Do you recall that you e-mailed to your wife's

23 e-mail address a -- some information, I believe, dealing

24 with -- was it Alecta?

25 A. Yes, the account Alecta.

00061

1 Q. You recall that?

2 A. Yes.

3 Q. When did you do that?

4 A. It was actually -- I had forgotten I had done  
5 that. I was -- during Peter Scott's deposition was the  
6 first that that was brought up that I had done that.

7 Q. You did do that?

8 A. Based on the e-mail, yes. And then I sat back  
9 and remembered. I remember doing that.

10 Q. What do you remember?

11 A. I remember the access point for Crump on the  
12 business services through the hotel I was at was not --  
13 it's -- it's a -- it was -- it was a -- I'm trying to  
14 look for the right word.

15 The remote access for the e-mail for Crump was  
16 poor at best. And I tried to open up -- I was working  
17 in an account, making sure as I was going along, because  
18 I still was obviously making sure my brokers were still  
19 happy. And I had a quote from RLI insurance on Alecta  
20 which I could not open. And the only way I could open  
21 it -- in fact, it froze up like for five, ten minutes  
22 while I was sitting in there.

23 So I forwarded it off to our home e-mail  
24 address, which my wife and I shared. It was that Yahoo  
25 account. And the reason I did that, 'cause then I'm

00062.

1 able to open up the Word document to take a look at  
2 the -- the -- the quote. It turned out it wasn't a good  
3 quote, but if it was a good quote, I most likely would  
4 have probably called up Cyndi Marty and said, hey, let  
5 them know that these people have quoted and give them,  
6 you know, preliminary terms so they can see about how  
7 much their insurance was going to cost.

8 Q. When you say it wasn't a good quote, what do  
9 you -- what do you mean?

10 A. I remember opening the RLI quote and saying,  
11 this is not what I asked him to do. And it was just  
12 a -- it was just a horrible quote.

13 Q. So I want to make sure I understand.

14 You had asked for a quote of a particular type  
15 of insurance?

16 A. Earthquake.

17 Q. And the quote was not of that type?

18 A. It was a quote that wasn't anywhere near the  
19 price that I needed, and it was also an attachment to  
20 the policy where it didn't make any sense to use.

21 Q. Do you recall the date that you forwarded this  
22 information on -- it was Alecta, correct?

23 A. Mm-hmm.

24 Q. Yes?

25 A. Yes. I'm sorry.

00065

1 Alecta policy, correct?

2 A. Correct.

3 Q. And you had gotten a quote, correct?

4 A. Mm-hmm. Yes.

5 Q. Did Crump ever provide insurance based upon

6 either that quote or some subsequent work trying to

7 provide that type of insurance?

8 MS. RUTTER: Objection to the extent it calls

9 for you to speculate.

10 THE WITNESS: Don't understand your question.

11 BY MR. STERN:

12 Q. Okay. Was insurance ultimately provided to

13 that customer?

14 MS. RUTTER: Speculation.

15 THE WITNESS: Yes.

16 BY MR. STERN:

17 Q. And was it provided by All Risks?

18 A. Yes.

19 Q. And was it provided by All Risks after you went

20 over to All Risks?

21 A. Yes.

22 Q. And did you do anything at All Risks to get

23 that business?

24 A. Sent him an e-mail and let him know where I

25 was.

00066

1 Q. Sent an e-mail to who?

2 A. Paul Lockie, L-o-c-k-i-e.

3 Q. L-o-c --

4 A. -- k-i-e.

5 Q. And he was where?

6 A. Woodruff Sawyer, the retailer.

7 Q. And when did you send it?

8 A. June 5th.

9 Q. 2007?

10 A. Yes.

11 Q. Do you have a copy of that e-mail?

12 A. Not on me. It's in my computer. I don't know  
13 if I have a copy.

14 Q. Where was it sent from?

15 A. All Risks' computer.

16 Q. And tell me, as best you recall, what the  
17 e-mail said?

18 MS. RUTTER: Counsel -- why don't you go ahead  
19 and answer. After you answer the question, I just --  
20 we've been going over an hour --

21 MR. STERN: Oh.

22 MS. RUTTER: -- so I'd like to --

23 MR. STERN: I'm sorry.

24 MS. RUTTER: -- take a break.

25 BY MR. STERN:

00067

1 Q. Just finish the answer to that question.

2 A. Sure. Dear Paul, I just want to let you know

3 I'm now at All Risks Insurance Brokers, and I would have

4 said 101 California Street, Suite 3100, San Francisco,

5 California, 999 -- and then my phone number is 343-2400.

6 Look forward to doing business with you in the future.

7 Regards, Mike.

8 MR. STERN: Okay. Let's take a break. What do

9 you want five minutes? Seven minutes?

10 MS. RUTTER: Sure.

11 VIDEO OPERATOR: The time is 10:18. We're

12 going off the record.

13 (Recess.)

14 VIDEO OPERATOR: The time is 10:36. We are

15 back on record.

16 BY MR. STERN:

17 Q. Before we took the break, you had described to

18 me the substance of an e-mail you said you had sent to

19 Paul Lockie at Woodruff Sawyer, and I'll characterize it

20 as essentially just announcing your new business

21 affiliation with All Risks with the contact information,

22 address and phone number, correct?

23 A. Yes.

24 Q. Did it contain any other information?

25 A. No.

00068

1 Q. Did you send similar messages to anyone else?

2 A. Yes.

3 Q. Who?

4 A. Linda Donley.

5 Q. And with what company?

6 A. This is all Woodruff Sawyer.

7 Q. Okay.

8 A. Brett Lawrence.

9 Q. And give me the business affiliation of the  
10 people you mentioned?

11 A. Sure. They're all brokers at Woodruff Sawyer.

12 Q. You mentioned Paul, Linda, Brett?

13 A. Brett Lawrence, yeah.

14 Q. Anyone else?

15 A. Steve Gately.

16 Q. Anyone else?

17 A. Judy Haines.

18 Q. Give me as complete an answer as you can  
19 remember.

20 A. Kristy Furrer with a K. Last name's  
21 F-u-r-r-e-r. Robin Fisher. Probably lastly would be  
22 Chuck Schumacher.

23 Q. And are all these people with Woodruff Sawyer?

24 A. Yes.

25 Q. Did you send any similar type of e-mail to

00069

1 anyone else --

2 A. Yes.

3 Q. -- when you relocated to All Risks?

4 A. Yes.

5 Q. Who?

6 A. Rob Machacek. It's Rob, and it's Machacek,

7 M-a-c-h-a-c-e-k. And Steve Aguilar. They're with HUB

8 International, H-U-B.

9 Q. Steve Aguilar?

10 A. Aguilar, A-g-u-i-l-a-r.

11 Q. Anyone else?

12 A. Roberta Blanchette. And she's at Willis.

13 Q. W-i-l-l-i-s?

14 A. Yes.

15 Q. Did you send any other type of communication to

16 anyone else notifying them that you were now at All

17 Risks? And we're talking the time frame, you know,

18 essentially June 2007.

19 A. When you say any other type of communication --

20 Q. Right.

21 A. Just an e-mail.

22 Q. And did it go to anyone else who you haven't

23 mentioned?

24 A. I would have to look at my log. Those -- we --

25 those would probably be my main -- my main contacts.

00070

1       Q.   How did you know how to communicate with the  
2   various people you mentioned?

3       A.   E-mail.

4       Q.   How did you know how to get in contact with  
5   them through the e-mail? Did you have their addresses?

6       A.   Yes.

7       Q.   Where did you get that?

8       A.   From my address book.

9       Q.   This was a personal address book or what?

10      A.   Business.

11      Q.   And where did -- where was that normally kept  
12   before you left Crump?

13      A.   In -- where did I -- where did I get the list  
14   of e-mail addresses?

15      Q.   Where was the list kept before you left  
16   Trump -- Crump?

17      MS. RUTTER: Better get your client right.

18      MR. STERN: Yeah.

19      THE WITNESS: Where was the list kept? Oh, in  
20   my Outlook at Crump.

21   BY MR. STERN:

22      Q.   On their computer system?

23      A.   Yes.

24      Q.   Did you take a copy of that with you -- I mean,  
25   did you download it somehow or what?

00071

1 A. Yes.

2 Q. Tell me what you did.

3 A. On Sunday I went in and wanted to get some  
4 pictures. I went into Crump's office, 2007.

5 Q. That would be the 3rd of June?

6 A. Yes.

7 And I knew it would be hard to resign, and I  
8 wanted to get some of the personal stuff out. And the  
9 one -- I had appointments with doctors, and I had some  
10 personal e-mail stuff, so I -- I actually downloaded, I  
11 believe, the calendar and the e-mail -- my e-mail  
12 addresses, which has personal and business in there.

13 Q. Did -- did you take the entire database that  
14 was your e-mail addresses?

15 MS. RUTTER: Objection. Vague and ambiguous as  
16 to "database."

17 THE WITNESS: About six pages, five pages.

18 BY MR. STERN:

19 Q. When printed out --

20 A. Yes.

21 Q. -- five pages?

22 A. Yes.

23 Q. Okay. Describe to me what you did in terms of  
24 downloading the information, the calendar and the e-mail  
25 addresses. Describe to me what exactly you did.

00072

1 A. Sure. I opened up Outlook. Went in -- there's  
2 an icon below. It says address -- or contacts. I'm  
3 sorry. Clicked on the contacts and printed it.

4 Q. Printed onto paper?

5 A. Yes.

6 Q. And what information did you print?

7 A. It printed e-mail addresses of everybody I  
8 had -- you know, anybody I had on the -- on the e-mail.

9 Q. And about how many names or contacts were there  
10 in that grouping?

11 A. I would say 50.

12 Q. Only 50 contacts in the entire list?

13 A. Yeah. I use business cards to e-mail most of  
14 the time, but the important and personal that I had on  
15 there was, if I had a friend or something like that, I'd  
16 put them on -- if I -- if I e-mailed them more than --

17 Q. When you say it was -- I think you said about  
18 six pages when you printed it?

19 A. Yeah.

20 Q. Was it one person per line so that you had 50  
21 or 60 on a page or -- let me -- let me fix that -- 50 or  
22 60 lines on a page?

23 A. No. I would -- I remember it being 10 to 15 on  
24 each, how it -- how it printed out.

25 Q. Per page?

00083

1 And I said, I know.

2 And he goes, well, you left Tri-City.

3 I said, I know.

4 And then we started talking more. And I said,

5 gosh, I know. The culture over Tri-City, I'm not so

6 sure about, I told Nick.

7 And then we had -- we started to have

8 discussions more of, you know, you interested in -- in

9 talking to us again.

10 And I remember saying sure, absolutely.

11 Q. So when was that that you indicated interest in

12 talking again?

13 A. Whenever the merger was. And I'm -- I'm

14 guessing, I would say --

15 MS. RUTTER: Well, don't guess --

16 THE WITNESS: Okay.

17 MS. RUTTER: -- but you can give --

18 THE WITNESS: Well --

19 MS. RUTTER: -- approximation.

20 THE WITNESS: Approximate -- approximate time

21 would be middle of March of '07.

22 BY MR. STERN:

23 Q. Yeah, let me -- let me give you a further

24 instruction. Sometimes you say, "I'm guessing."

25 We don't want what would be a guess. For

00084

1 instance, if I asked you what kind of car do I drive,  
2 you have no basis whatsoever for knowing that, I assume.  
3 You've never seen me before today. You certainly  
4 haven't seen me with my car because I didn't bring it up  
5 here. So that would be a pure guess, right?

6 A. Correct.

7 Q. By the same token, a conversation you had with  
8 someone is, in fact, something you knew something about.  
9 You may have a weak recollection. So you can give me an  
10 approximate date -- maybe. Maybe not. But that's not a  
11 guess. You understand the distinction? One may be a  
12 frailty of your memory. The other is just I have no  
13 basis whatsoever.

14 So if it's an approximation, give me your best  
15 approximation. If you have none, tell me, "I have none,  
16 I just can't remember."

17 But, for instance, March 2007 is your best --

18 A. Approximation.

19 Q. -- approximation. Okay.

20 Now, March 2007 is your best recollection of  
21 about when the merger took place with Tri-City; is that  
22 right?

23 A. Yes.

24 Q. Okay. And tell me, as best you recall, the --  
25 with as much detail as possible, what that conversation

00085

1 was that you had with Nick following that Tri-City

2 merger or purchase, I guess?

3 A. My recollection of the conversation was that

4 Nick said that you and Peter Scott, Sheryl Smith, Joe

5 Mallory, five or six employees were all ex-Tri-City and

6 you left Tri-City for a reason. You know, I -- I think

7 it's time that you and I talk again.

8 That's my recollection.

9 Q. And you indicated that might make sense,

10 correct?

11 A. Yes.

12 Q. And what happened next?

13 A. I think -- I believe he said I would -- I would

14 like to fly out and meet you in person.

15 Q. And is that what happened?

16 A. Yes.

17 Q. So Nick came out to San Francisco. And what's

18 your best recollection of when that took place?

19 And you're welcome to again look at the 2007

20 calendar if that might jog your memory.

21 A. Approximately April.

22 Q. Do you have any documentation that shows any of

23 these dates or events?

24 A. No.

25 Q. So on approximately April 2007, Nick Cortezi

00086

1 flew out to San Francisco and you and he got together?

2 A. Yes.

3 Q. Anyone else present?

4 A. No.

5 Q. And where did you get together?

6 A. I believe we had dinner at Cosmopolitan Cafe.

7 Q. And was that the only meeting you had at that  
8 time frame?

9 A. Yes.

10 Q. And what was discussed?

11 A. General business conditions. Would I be  
12 interested in working for All Risks to start up a  
13 property brokerage operation out in California.

14 Q. Did All Risks at that point in time do property  
15 brokerage in California?

16 A. Very limited.

17 Q. What else was discussed in that dinner meeting  
18 in approximately April?

19 A. Who was on my team.

20 Q. And did you tell him any names?

21 A. Yes.

22 Q. Who did you tell him was on the team?

23 A. Cyndi Marty, Cora De La Cruz. C-o-r-a and a  
24 D-e, L-a, C-r-u-z.

25 Q. Correct.

00087

1 A. And then Sue Brandt.

2 Q. Sue Brandt?

3 A. Yeah. S-u -- Brandt is B-r-a-n-d-t.

4 Q. Anyone else?

5 A. No.

6 Q. Did you provide him any information with  
7 respect to whether you thought any of these people would  
8 be interested in perhaps going to All Risks?

9 A. No.

10 Q. Did he ask anything about these people?

11 A. I can't recall.

12 Q. Did he ask you anything about what jobs they  
13 performed or how they fit in on your team?

14 A. He asked about Cyndi and her background in  
15 insurance.

16 Q. What do you recall him asking?

17 A. I recall him asking how long she had been with  
18 Crump. And I remember I told him less than a year and  
19 she was at Marsh prior to that for ten years. That's  
20 basically how I introduced Cyndi to almost everybody.

21 Q. Did you indicate to him at all any information  
22 about any of these people, for instance, what they did  
23 as part of your team?

24 MS. RUTTER: Objection to the extent it's been  
25 asked and answered.

00088

1 THE WITNESS: Just would be to Cyndi. I told

2 the other two were assistants, but Cyndi was a broker.

3 BY MR. STERN:

4 Q. Had he heard of Cyndi or known anything about

5 her? Did he indicate?

6 A. He did not indicate.

7 Q. And you say he -- you described her as a broker

8 with Crump less than a year, prior with Marsh. Did you

9 give him any other information about her?

10 A. I can't recall.

11 Q. Did you give any statement such as she's good,

12 she's crap, she's --

13 A. Yeah.

14 Q. -- would be a valuable asset? Anything along

15 that line?

16 A. Yes. I said she's a good broker.

17 Q. Anything else? Any additional information?

18 A. No.

19 Q. Did he ask how he could get in touch with her?

20 A. No.

21 Q. Did you provide any information to him so that

22 if he desired, he could follow up with her?

23 A. No.

24 Q. You recall anything else that was discussed

25 with respect to either who was on your team or Cyndi

00089

1 Marty or any of these people?

2 A. No.

3 Q. About how long did you spend discussing that  
4 topic?

5 MS. RUTTER: What topic? Objection. Vague.

6 BY MR. STERN:

7 Q. The team, the people, Cyndi. Yeah.

8 A. I don't know.

9 Q. More than five minutes?

10 A. Less than five minutes.

11 Q. What else did you discuss at this dinner  
12 meeting with Nick that you believe took place in  
13 April 2007?

14 A. Oh, the culture at All Risks. What his vision  
15 was for the next ten years. His personal life. I  
16 wanted to see if he was a good family man, which I knew  
17 he was. I could just tell. We talked about Marcus  
18 Payne. We both had a fondness for Marcus. I don't  
19 recall anything else.

20 Q. And was Marcus still working -- consulting with  
21 him --

22 A. Yes.

23 Q. -- with All Risks?

24 A. Yes.

25 Q. Is Marcus still consulting with All Risks?

00090

1 A. Yes.

2 Q. Anything else you recall about that meeting  
3 with Nick in April of 2007 when he came out to  
4 San Francisco?

5 A. No.

6 Q. So it was just that dinner meeting, and the  
7 total meeting -- the total dinner was what? An hour?  
8 Two?

9 A. Yeah, two.

10 Q. And it -- everything -- your entire meeting  
11 took place at that one location --

12 A. Cosmo Cafe.

13 Q. -- Cosmo Cafe?

14 A. Yes.

15 Q. Then what happened next with respect to you  
16 ultimately moving to All Risks?

17 A. We had another dinner in May that Nick had set  
18 up with myself, and he had called Cyndi and set it up  
19 for the same night.

20 Q. Together?

21 A. Yes.

22 Q. One dinner?

23 A. Yes.

24 Q. After the April dinner at Cosmo Cafe, did you  
25 have any communication with Nick about Cyndi before you

00093

1 BY MR. STERN:

2 Q. Okay. If I understood you, and maybe I didn't,

3 you said that Cyndi had mentioned to you that she'd

4 gotten a call from Nick Cortezi, and I think you said

5 she didn't know anything about Nick or All Risks,

6 correct?

7 A. Correct.

8 Q. And you smiled at her and told her she should

9 pay attention to it, or something to that effect,

10 correct?

11 A. I think I said she should -- you should listen.

12 Q. You should listen.

13 And you said the conversation was in late April

14 or May, right?

15 A. I --

16 MS. RUTTER: I don't think he --

17 THE WITNESS: -- didn't say --

18 MS. RUTTER: -- said when that conversation --

19 THE WITNESS: I don't -- I don't know when it

20 happened.

21 BY MR. STERN:

22 Q. Okay.

23 A. Yeah.

24 Q. But in any event, that wasn't the call where a

25 dinner was set up, that -- this dinner in May that you,

00105

1 Q. Okay. And do you know, was there any  
2 communication between Nick and Cyndi after that?

3 MS. RUTTER: After the dinner?

4 MR. STERN: Yeah.

5 THE WITNESS: Yes.

6 BY MR. STERN:

7 Q. Tell me what took place after that dinner with  
8 respect to you and Cyndi ultimately going to All Risks  
9 as employees?

10 MS. RUTTER: Objection. The question's  
11 overbroad. It calls for a narrative.

12 BY MR. STERN:

13 Q. Go ahead.

14 A. Can you ask it again?

15 Q. Yeah. You had the dinner. Nick was going to  
16 put together a proposal.

17 What happened after that?

18 A. I received a proposal in the mail -- or was it  
19 faxed? I think it was e-mailed to my home address the  
20 day before I left for Hawaii.

21 Q. And what did you do with it?

22 A. I printed it off, and I remember just tucking  
23 it away 'cause I was packing for Hawaii and I was going  
24 to look at it while I was in Hawaii.

25 Q. And then what happened next with respect to the

00106

1 ultimate move to All Risks?

2 A. I moved -- I'm sorry?

3 Q. You went off to Hawaii?

4 A. Yes.

5 Q. Did you respond at all to the offer at that  
6 point?

7 A. Yes. I signed it -- I don't remember when I

8 signed it. I remember either having a verbal

9 conversation with All Risks saying I'm going to sign it.

10 I don't recall if I signed it in Hawaii or when I got  
11 back.

12 Q. Did you date it when you signed it, whatever  
13 day it was?

14 A. I'm sure I did.

15 Q. And what was the "it" that you said you would  
16 sign?

17 A. The contract.

18 Q. So you believe you had signed it by some -- you  
19 say you signed it in Hawaii?

20 MS. RUTTER: Objection to the extent it  
21 misstates his testimony.

22 THE WITNESS: I don't know.

23 BY MR. STERN:

24 Q. Okay. But you indicated at least while you  
25 were in Hawaii you told them you would sign it?

00107

1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. So that would be anytime from May 25th to  
5 June 2nd, 2007?

6 A. Yes.

7 Q. And who did you tell you would sign?

8 A. I can't recall if it was either Nick or Matt.

9 Q. Did you have any communications with Cyndi  
10 prior to coming back from Hawaii with respect to the  
11 proposal?

12 MS. RUTTER: Which proposal?

13 MR. STERN: The one from All Risks.

14 MS. RUTTER: The proposal to him?

15 MR. STERN: Let me clarify.

16 MS. RUTTER: It's vague and ambiguous.

17 MR. STERN: Let me clarify.

18 Q. The proposal that you got, was it just for you,  
19 or was it for you and Cyndi?

20 A. It was just for me.

21 Q. Okay. Was a separate proposal made to Cyndi?

22 A. Yes.

23 MS. RUTTER: Objection. Calls for speculation.

24 BY MR. STERN:

25 Q. Did you have any understanding as to what that

00110

1 understand it. If you want to make it clear that this  
2 is confidential, I have no problem with that. But I  
3 don't want to have confusion as to what this means. I  
4 mean, I think I saw something in here 73 percent,  
5 27 percent. I could have the numbers wrong. I need to  
6 understand what the heck this is, so --

7 MS. RUTTER: That's fine. He can speak in  
8 terms of percentages.

9 MR. STERN: Okay. Well, let's -- let's --

10 MS. RUTTER: He's not --

11 MR. STERN: -- take it one step at a time.

12 MS. RUTTER: He's not going to disclose the  
13 terms of --

14 BY MR. STERN:

15 Q. Do you remember --

16 MS. RUTTER: -- his agreement.

17 BY MR. STERN:

18 Q. -- what you were talking about?

19 A. Yes.

20 Q. Okay. Why don't you move forward, please.

21 A. Can I see the percentage, how it's written?

22 Q. I'll try and reference an e-mail if I can find  
23 it quickly.

24 I will give you a page right now. We won't

25 mark it yet, but it is All Risks, page 19. I don't know

00111

1 whether you have a copy handy, but let me just -- where

2 did I put it?

3 There's a page, All Risks 19. The first

4 paragraph begins "Option 2." You'll see a 73 to you, 27

5 to redact?

6 A. Okay. I know what that is.

7 Q. Okay.

8 A. That was a wording in the contract that after

9 year 4 -- year 3, if I were to -- say I do a certain

10 dollar amount, that I would get an extra five points

11 toward my bonus. And if I didn't do that dollar amount,

12 then the revenue that was produced, we'd be paid

13 accordingly, which would be 73 percent to me and

14 27 percent to Cyndi.

15 Q. Okay. Were you -- in your dealings with All

16 Risks up to the time that you indicated you would sign

17 this agreement, were you negotiating for both you and

18 Cyndi?

19 MS. RUTTER: Objection as to the term

20 "negotiation" as vague and ambiguous and to the extent

21 it calls for a legal conclusion.

22 THE WITNESS: I negotiated the years.

23 BY MR. STERN:

24 Q. Did you negotiate any other terms for Cyndi?

25 A. I negotiated her -- after she had a

00112

1 conversation with Nick on salary, I negotiated more

2 money for her.

3 Q. So what do you recall about that?

4 A. On the salary?

5 Q. Yeah. When you --

6 A. I recall that I saw the number and I didn't

7 like it, and I said I think Cyndi should be paid more.

8 Q. Did you do that on your own initiative, or did

9 Cyndi say something or what caused you to do that?

10 A. I did that on my own initiative.

11 Q. And why?

12 A. I didn't think it was enough money for her.

13 Q. Okay. Going back to the -- the -- you --

14 you -- you have the May 2007 dinner. Nick indicated

15 he'd get you a proposal. The proposal you believe came

16 in the day before you went to Hawaii. Correct?

17 A. Correct.

18 Q. And from that point on, did you have any

19 further discussion with Cyndi?

20 A. I don't recall.

21 Q. You got the proposal, you reviewed it, and you

22 indicated some time during the period you were in

23 Hawaii, you believe, that you would sign it, correct?

24 A. Correct.

25 Q. Were there any changes that you requested be

00114

1 BY MR. STERN:

2 Q. Is that correct?

3 A. That's correct.

4 Q. Okay. Let's look at Exhibit 4, which is your  
5 agreement, again, page 4, paragraph 16. You still have  
6 that in front of you?

7 A. Yes.

8 Q. The bottom of page 4, it's titled "Voluntary  
9 Termination By Employee." I'll quote:

10 "This Agreement (other than  
11 paragraphs 10, 11, 12, 13, and 14 hereof) may  
12 be terminate by Employee upon 15 days prior  
13 written notice to Crump, or by other written  
14 agreement signed by both parties."

15 And then on page -- oh, I think that -- yeah.  
16 That's the end.

17 Did you, when you left Crump, give written  
18 notice?

19 A. No.

20 Q. Did you give 15 days' notice even if it wasn't  
21 in writing?

22 A. No. I was asked to leave.

23 Q. When did you -- did you at some point provide  
24 notice that you were leaving Crump?

25 A. Verbal notice.

00115

1 Q. Verbal notice to who?

2 A. Peter Scott.

3 Q. Given when?

4 A. Sunday.

5 Q. Sunday what date?

6 A. June 3rd, 2007.

7 Q. And when you gave him notice, did you tell him  
8 what your last day of work would be?

9 A. No.

10 Q. What was your intention as of that point in  
11 time as to how long you would continue working at Crump?

12 A. I just remember our conversation. Come in  
13 Monday morning and let's talk about this.

14 Q. What was your intention with respect to when  
15 you intended to start with All Risks as of the time you  
16 gave notice to Peter on Sunday, June 3rd?

17 A. I know how Peter's reacted in the past, and I  
18 figured when him and I talked on Monday, he would tell  
19 me to leave. He's done that in the past to many  
20 employees.

21 Q. So what was your intention as to how long you  
22 would work at Crump following the June 3rd notice?

23 A. I had no intention.

24 Q. Was it your intention to leave almost  
25 immediately? By that I mean, June 4th or 5th?

00116

1       A. I figured his intention would be to get me out  
2 of there as soon as possible. But my intention -- I  
3 didn't have an intention.

4       Q. Did you intend to remain for the full 15 days  
5 if he desired?

6       A. Didn't even think about it.

7       Q. You didn't think about it?

8       A. No. I didn't.

9       Q. Not at all?

10      A. No. Because I knew he would tell me to get  
11 out, which he did.

12      Q. Did you understand that even if he told you to  
13 get out, that your obligation to Crump was to not start  
14 working elsewhere until the 15-day notice period had run  
15 unless there was a written agreement signed by both  
16 parties?

17           MS. RUTTER: Objection to the extent it lacks  
18 foundation and also to the extent it calls for a legal  
19 conclusion.

20           THE WITNESS: No.

21 BY MR. STERN:

22      Q. Okay. You didn't look at your contract before  
23 you gave notice that you were leaving Crump, right?

24           MS. RUTTER: Objection to the extent it  
25 misstates his testimony. He testified he didn't even

00126

1 Q. -- brokers, right?

2 A. Absolutely, yes. Yes.

3 Q. You would agree that as of April 30th, you had  
4 serious interest in All Risks, didn't you?

5 MS. RUTTER: Objection. Vague and ambiguous as  
6 to "serious interest" and to the extent it's been asked  
7 and answered.

8 THE WITNESS: No.

9 BY MR. STERN:

10 Q. Okay. Let's look at Exhibit 6, the Broker  
11 Compensation Agreement, and I'm going to read from the  
12 first paragraph. It says, quote:

13 "In consideration of the terms,  
14 provisions, and covenants of the Memorandum  
15 of Agreement ('Memorandum'), dated as of  
16 June 7, 1996, by and between Crump Insurance  
17 Services Inc. ('Company') and Mike McGrath,  
18 Employee."

19 And then it continues. It says, "attached as  
20 Exhibit A."

21 Do you know whether that June 7, 1996 agreement  
22 was attached as Exhibit A?

23 A. It was not.

24 Q. It was not.

25 You understood this was referring to what we've

00153

1 A. I knew you'd ask me that. I want to say Menlo

2 Equities. I venture -- I think they were June 4th.

3 Q. So if I'm understanding you, at no point in

4 time did you ever ask any of the retail brokers to

5 appoint All Risks as the broker of record in place of

6 Crump, correct?

7 A. That's correct.

8 Q. And that in every occasion -- let me ask.

9 In every occasion where All Risks got appointed

10 to replace Crump as broker of record with respect to

11 when you moved over to All Risks, it was suggested by

12 the retail broker that that take place?

13 A. Yes.

14 Q. And which retail brokers -- well, let's strike

15 that.

16 Let's mark as Exhibit 8 document All Risks

17 No. 4.

18 MS. RUTTER: Is it Exhibit 4? Did you say

19 Exhibit 4?

20 MR. STERN: No, it's --

21 MS. RUTTER: Oh, I'm sorry.

22 MR. STERN: The number.

23 MS. RUTTER: Oh, Bates number.

24 MR. STERN: Bates number. I'm sorry. Yeah.

25 (Deposition Exhibit 8 marked by the court

00159

1 Q. And did you have any discussion at all about  
2 potential employment with Cyndi during that period from  
3 the time the proposal was made until the time you gave  
4 your notice, June 3rd?

5 MS. RUTTER: Objection. Asked and answered.  
6 It's cumulative.

7 THE WITNESS: I recall a conversation I had the  
8 day before I left for Hawaii, saying I'd received my  
9 offer via e-mail. Did she receive hers?

10 BY MR. STERN:

11 Q. And what did she tell you?

12 A. She wasn't home yet. She didn't know. That  
13 would have been 2007, 24th of May.

14 Q. Did she at some point in time indicate to you  
15 that she had decided to leave Crump and go to All Risks?

16 A. On that Sunday, I told her I was going to  
17 resign. She told me she liked what she saw and she was  
18 going to resign as well.

19 Q. So on June 3rd, she told you she planned to  
20 resign.

21 Did she indicate when?

22 A. She was going to resign -- yeah, I mean, the  
23 same day I was going to do it, which was Monday,  
24 June 4th.

25 Q. Do you know whether she actually resigned

00184

1 Q. And it's dated May 22nd, 2007, correct?

2 A. Correct.

3 Q. It says, "Any word from Mr. McGrath yet?"

4 Do you see that?

5 A. Yes.

6 Q. Do you know what that's referring to?

7 A. It must be any -- no, I don't know what it's  
8 referring to.

9 MR. STERN: Okay. Let's mark as next

10 Exhibit 18, which will be All Risks 18, 19, 20 and 21.

11 (Deposition Exhibit 18 marked by the court

12 reporter.)

13 BY MR. STERN:

14 Q. This is an e-mail chain.

15 And are these e-mails that you've seen before  
16 today?

17 A. Yes.

18 Q. When did you first see them?

19 A. Either that Wednesday or Thursday.

20 Q. Which Wednesday or Thursday?

21 A. Of May 23rd, 2007.

22 Q. Okay. If you go -- the fourth page is  
23 essentially blank, so go to the third page, if you will.

24 The very first e-mail appears to be dated

25 May 7th, 2007, correct?

00187

1           The redacted is again to Cyndi, isn't it? It's  
2   referring to Cyndi, so long as you and Cyndi generate  
3   more than?

4           MS. RUTTER: Objection to the extent it calls  
5   for you to speculate. It's also privacy, which is why  
6   it was redacted in the first place, but --

7           THE WITNESS: I don't know.

8   BY MR. STERN:

9           Q. Was there ever anyone else involved as  
10   potentially moving to All Risks other than yourself and  
11   Cyndi?

12          A. No.

13          Q. Did you ever try to bring over any other Crump  
14 employee to All Risks?

15          MS. RUTTER: Whoa. Objection. Lacks  
16 foundation he tried to bring over anybody.

17   BY MR. STERN:

18          Q. Did you?

19          MS. RUTTER: Misstates testimony.

20          THE WITNESS: No.

21          MR. STERN: Okay. Let me mark as --

22               (Off the record.)

23          MR. STERN: Let me mark as Exhibit 19 document  
24   C 40 through 47.

25               (Deposition Exhibit 19 marked by the court

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to  
12 the original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review of  
14 the transcript [☒] was [☐] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: MAY 13 2008

22  
23   
24 SUZANNE F. BOSCHETTI  
25 CSR No. 5111

**McGRATH DEPOSITION EXHIBIT 4**

## MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT dated June 7, 1996 between Crump B&S of San Francisco Insurance Services, Inc., a California Corporation (hereinafter "Crump"), and Michael P. McGrath (hereinafter "Employee").

## INTRODUCTION

This Agreement is intended to set forth the terms and conditions of the employment relationship between Crump and Employee. This relationship is based on the agreement and understanding of the parties that Crump is the owner of the Crump Business relating to Crump Customers as these terms are used below, and that these customers comprise a substantial part of the goodwill of Crump. To protect the business and goodwill of Crump and the confidential information belonging to Crump, the parties have agreed to certain limitations on competition and disclosure of confidential information following termination of employment. Such limitations relate solely to Crump Business and Crump Customers, however, and are intended to permit Employee to remain in the insurance and brokerage business, if he so desires.

## AGREEMENTS

Crump and Employee agree as follows:

1. **EMPLOYMENT COMPENSATION** - Crump agrees to employ Employee to solicit, place, and service property or casualty business, during the term of the Agreement and to pay Employee a base salary of \$125,000 per year, with future adjustments in accordance with Crump base salary guidelines. Base salary shall be payable in accordance with Crump regular payroll procedures, and may be changed only by written agreement of the parties.
2. **PERFORMANCE BY EMPLOYEE** - Employee agrees to devote his entire business time and effort to furtherance of the business of Crump and to perform faithfully to the best of his ability all assignments of work given to him by Crump.
3. **TERM** - The term of this Agreement shall commence as of the date of this Agreement and shall continue through December 31, 1997, at which time this Agreement will be extended automatically to June 30, 1999, if the combined Net Retained Revenue of Robert Lindner, Employee, and Paul Farbstein ("the Team") exceeds \$1,500,000 for the time period July 1, 1996, through December 31, 1997. "Net Retained Revenue" shall be defined as brokerage actually received by Crump, less any return brokerage. This Agreement is at all times subject to earlier termination in accordance with paragraph 7 below.

C0001

Δ π EXHIBIT <u>4</u>	
Deponent <u>McGrath</u>	
Date <u>4/30/08</u>	Rpt. <u>SFB</u>
WWW.DEPBOOK.COM	

**McGRATH DEPOSITION EXHIBIT 6**

or otherwise while using Company equipment. In addition, users must refrain from visiting sites that could be deemed inappropriate to fellow employees. Examples of sites in this category would be ones that promote violent behavior, engage in sexually or racially offensive comments, jokes and/or radical political viewpoints, or include content that would violate Crump's Anti-Discrimination or Sexual Harassment Policies.

- It is a violation of Company policy to use the Internet for excessive personal use. The expectation in this area is similar to personal phone calls. We expect users to display good judgment. Limited or occasional personal use is acceptable, but that usage should in no way affect the productivity of an individual. Management reserves the right to restrict personal usage for an individual who abuses this privilege. Abuse of the Internet may result in disciplinary action, up to and including termination.

#### Non-Smoking Policy

Crump provides a smoke-free environment for all employees, and all Company facilities are smoke-free workplaces. Smoking is absolutely prohibited anywhere on Company premises. This policy applies to third parties such as vendors and clients as well as employees. Any individual who has a complaint regarding a violation of this policy should contact his/her manager or Human Resources without fear of retaliation.

#### Media Relations

Responding effectively to media inquiries can enhance the public understanding of our business and Crump as a whole. Employees must consult with Corporate Marketing or Communications before responding to any media inquiries.

## Chapter 7: Leaving Crump

#### Resignations

Should you decide to voluntarily leave your position with Crump, we ask that you provide your manager with at least two weeks' advance notice and a written resignation letter. Employees who are leaving Crump will be paid for any earned but unused PTO days with two weeks advance notice of resignation, at

adjustments will be made for PTO taken but unearned. For additional discussion please also refer to PTO Policy.

Crump reserves the right to determine whether an employee must work during the notice period he/she provided, or must stop working but be paid the amount he/she would have earned during the notice period. For example, if an employee resigns and gives two (2) weeks' notice, Crump may elect to pay the employee for the two (2) week period rather than have the employee continue to work for that time frame. If, however, Crump learns that an employee who was not required to work his/her entire notice period engaged in activities contrary to the interests of Crump such as solicitation of clients or colleagues, Crump reserves the right not to pay the individual for those portions of the notice period he/she did not actually work.

#### Exit Interviews

If circumstances permit, the Human Resources Department will arrange an exit interview with you before you leave Crump. This interview will cover the reasons for separation; how benefits will be affected; your PTO account; outstanding advances and other relevant matters. A representative from the Human Resources Department will ask you about your career with Crump and for your suggestions regarding how to improve the work environment.

#### Retirement

For those employees who reach retirement age with us, we urge you to provide your manager with a minimum of two (2) months' notice of your anticipated retirement date. This will ensure that we are able to complete all appropriate retirement forms and begin your entitled benefits as quickly as possible. If you have any questions regarding retirement, please contact the Human Resources Department.

#### Severance Pay Plan

Please consult Human Resources for the Severance Pay Plan applicable to you.

CONFIDENTIAL

*Crump Group Employee Handbook*

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*Crump Group Employee Handbook*

### BROKER COMPENSATION AGREEMENT

In consideration of the terms, provisions, and covenants of the Memorandum of Agreement (the "Memorandum"), dated as of June 7, 1996, by and between Crump Insurance Services, Inc. (the "Company") and Mike McGrath ("Employee") attached as Exhibit A, commencing January 1, 2007 and continuing during the term of this Agreement, Employee will receive compensation consisting of a Base Salary (or Actual Salary if adjusted as described below) and where applicable, a Bonus and a Deferred Cash Bonus, all subject to the terms and conditions set forth herein and based upon the formula described below.

#### 1. Base Salary

(a) Employee's Base Salary shall be an amount as is mutually agreed between the parties, and will be payable in equal periodic installments in accordance with the Company's customary payroll practices for similarly situated employees.

(b) The amount of Employee's Base Salary is set forth in attached Schedule 1.

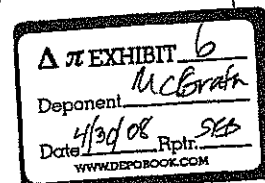
#### 2. Bonus

(a) In addition to the Base Salary, Employee may be eligible to receive a Bonus. The amount of any Bonus payable shall be determined by a formula that multiplies Employee's "Actual Salary" by an "Agreed Multiple" to establish a "Bonus Threshold" - then deducts certain "Credits" to derive an "Adjusted Bonus Threshold". Company will then apply certain "Percentage Incentives" to Revenue in excess of the "Adjusted Bonus Threshold" to determine the Bonus amount. For purposes of this Agreement, Employee's "Actual Salary" equals the Base Salary as adjusted for any raise awarded during the applicable calendar year. Calculation of the Bonus is as follows:

(i) "Revenue" equals the total of all commissions and fees paid to and retained by the Company attributable to accounts accurately booked by Employee during calendar year 2007; excluding contingent commission payments and profit sharing agreements, provided, however,

(A) The Company may, in its sole discretion (1) deduct from Revenue all or any portion of bad debt charged to an account booked by Employee and included in these calculations or (2) in the event that the Company deems the bad debt to result primarily from the act or omission of Employee, offset all or any portion of such bad debt against any Bonus otherwise payable hereunder;

C0007



provided, that the aggregate deductions in (1) and (2) above shall not exceed the total amount of such bad debt; and provided further that,

(B) Error and Omission ("E&O") claim payments and costs to defend E&O claims on accounts handled by Employee may also, at the Company's sole discretion, be deducted from the calculation of Revenue or be offset against any Bonus otherwise payable hereunder.

(ii) The "Agreed Multiple" is a multiple of Employee's Actual Salary. Company will multiply Actual Salary by the Agreed Multiple to provide a "Bonus Threshold".

(iii) From the Bonus Threshold, Company will in its sole discretion, but based upon performance rating criteria described in attached Exhibit B, determine and deduct both Office and Company "Credits" based upon profit center and overall company performance, to derive a lower "Adjusted Bonus Threshold". So long as (1) Employee's Revenue exceeds \$300,000 ("Eligible Revenue") and (2) Employee is an employee of the Company on the date on which bonuses are paid by the Company, Employee will be eligible to receive a Bonus

(iv) The amount of any Bonus for Revenue above the Adjusted Bonus Threshold will be calculated according to the following scale:

(A) For revenue of 750,000 and less, Company will subtract Adjusted Bonus Threshold from \$750,000 or Revenue, whichever is less, and multiply the remaining amount by a Bonus percentage of 25%;

(B) Revenue in excess of \$750,000 but less than \$1.0 million (provided, however, Company will subtract the results of (iv)(A) above if a negative number) will be multiplied by a Bonus percentage of 28%;

(C) Revenue in excess of \$1.0 million but less than \$2.0 million will be multiplied by a Bonus percentage of 30%; and

(D) Revenue in excess of \$2.0 million will be multiplied by a Bonus percentage of 35%.

The total Bonus payment will equal the sum of A, B, C & D above.

(b) Bonus payments will be made in a lump sum on or about February 28 of the year following the year in which they are earned (i.e. on or about 2/28/08 for 2007 Bonuses), but no later than March 31 of that following year (the "Qualification Date"). However, Company intends to make an advance payment

C0008

of up to 80% of any Bonus earned as of June 30 of the current calendar year on or about September 1 of that current calendar year unless it is advised in advance, in writing, by the Employee that he/she does not wish to receive such advance payment.

(c) Notwithstanding the foregoing, in the event of termination of Employee's employment prior to the Qualification Date due to Employee's death, disability (defined as Employee's inability to fully discharge his or her duties under the Memorandum by reason of illness, injury or incapacity for a period of 60 consecutive days) or retirement, the Company will pay a Bonus equal to the amount earned to date through the end of the calendar month in which the Employee's death, disability or retirement occurs, so long as the Employee was otherwise eligible to receive a Bonus according to the formula set forth above.

3. Deferred Cash Bonus.

(a) In addition to Actual Salary and Bonus as described above, Employee may also be eligible to receive a Deferred Cash Bonus.

(b) Deferred Cash Bonuses shall equal an additional 3% of Revenue between \$750,000 and \$1.5 million and 5% of Revenue in excess of \$1.5 million and shall be payable as follows:

(i) Company will pay interest on any Deferred Cash Bonus at a rate not less than 2% per annum. Company may, at its sole discretion offer to employee certain investment options for the Deferred Cash Bonus in lieu of the 2% per annum amount.

(ii) Payment of a Deferred Cash Bonus (including accrued interest earned) will be made 2 years (the "Deferred Cash Bonus Payment Date") from the date on which any final Bonus award is paid for the applicable calendar year and will be paid to Employee in cash on that Deferred Cash Bonus Payment Date.

(c) Notwithstanding the foregoing:

(i) Any Deferred Cash Bonus will be forfeited in its entirety if Employee resigns prior to the Deferred Cash Bonus Payment Date or is terminated for cause.

(ii) If an Employee dies or becomes permanently disabled prior to the Deferred Cash Bonus Payment Date, Company shall make payment of the Deferred Cash Bonus to Employee or to Employee's Estate, as applicable, within thirty days following the date of permanent disability or death.

(iii) If an Employee takes early, normal or deferred retirement, the Deferred Cash Bonus will be paid upon retirement.

(iv) If an Employee is terminated without cause – the Deferred Cash Bonus will be paid upon termination.

4. Employee's employment by the Company shall be "at will" and either Employee or the Company may for any reason terminate Employee's employment at any time.


5. Except as may be modified herein, the terms, provisions, covenants, conditions and agreements contained and set forth in the Memorandum shall continue unmodified and the Memorandum shall remain in full force and effect in accordance with its terms.

6. The term of this agreement shall be from January 1, 2007 through December 31, 2007.

IN WITNESS WHEREOF, the parties have duly executed this Broker Compensation Agreement as of this 30<sup>th</sup> day of April, 2007.

CRUMP INSURANCE SERVICES, INC.

By:   
Title: CEO

  
Employee

C0010

**SCHEDULE 1 -- Calendar Year 2007**

**[EMPLOYEE NAME]**

Base Salary = \$200,000

Agreed Multiple = 2.8

C0011

**EXHIBIT B****Description of applicable Performance Rating Criteria****Criteria**

**1. Gross Revenue & Production Revenue in comparison to Budget, Goals and Year over Year.**

**2. Net Revenue & Expense Controls in comparison to Budget, Goals and Year over Year.**

**3. Quality control factors, receivables, bad debt, E&O.**

**4. Talent Development, Employee Satisfaction, Customer Service & Market Relations.**

**5. Advancement of corporate direction, "One Crump", collaborative efforts, serving as a company resource and utilization of company resources.**

**Scores:**

**5% – Excellent – well exceeded all targets**

**4% – Good – met all objectives exceeded some**

**3% – Average – met most objectives**

**2% – Fair – met some objectives, short on others**

**1% – Poor – failed to meet many objectives, some progress**

**0% – Failed to meet majority or all objectives, no progress**

**Average the results of the 5 Criteria above to arrive at a percentage amount between 0-5%**

C0012

**McGRATH DEPOSITION EXHIBIT 18**

CONFIDENTIAL: Subject to Protective Order

Page 1 of 4

NC-6-5-07

From: Nick Cortezi  
Sent: Wednesday, May 23, 2007 4:57 PM  
To: Matt Nichols  
Subject: would you proof this overnight and gylve me some feedback? Rough Draft

Mike-  
You have a deal.  
We will guarantee you and Redacted at the following salaries for 6 years:

You- Redacted  
Redacted

The employment contract will require you to exercise your best efforts on our behalf, and the only provisions that might waive our obligation to pay would be disability (we would put the same long term disability in place that you have now- let us know the details), death (we will put insurance policies in place to offset our obligation to you which would pay your estates in the event that you expire before the agreement does), and for cause (which will be described in detail and relate specifically to illegal or criminal actions that either of you may take which jeopardize your abilities to work in the business). Redacted will report to you, and the one codicil is that her guarantee will be able to be waived by you in the event that you determine that she is not meeting your expectations.

We will pay a sign on bonus of Redacted in the form of an interest free loan to you which will be forgiven over the next 6 years at Redacted per year. In the event that you leave the contract either voluntarily or as a result of the disability, death of for cause, you will have to repay us the portion of the note which has not been forgiven.

We will pick up reasonable parking, gas, club dues, etc. I trust that you will be fair with us.

Your role will be Property Practice Leader- West Coast. Redacted will join us as a Senior Broker. We don't do the title thing and we recognize our brokers as Brokers or Senior Brokers. Once an individual broker exceeds Redacted h retained, they are made a VP of the company in an non administrative sense, but in the interests of fairness, they have to do it while at All Risks.

From a P&L standpoint, you will be a carve out direct to Home office. This insulates you and Paul from the pressure on his P&L in the first years. When things work out financially over the coming years, we will look to roll it into the San Fran P&L, so that it is a win win for everyone.

Our office at 101 California has two great offices available for you and Redacted best views in the company, countrywide).

Bonus over and above salary will be earned as follows:

Year 1- 25% of Revenues over \$  
Year 2- 25% of Revenues over \$ Redacted  
Year 3- 25% of Revenues over \$

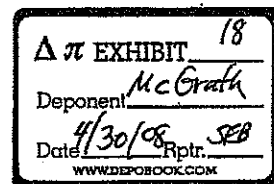
Support salaries and support bonus would be subtracted from Bonus amounts to determine the final bonus amount. We would not be deducting for reasonable travel and entertainment.

Years 4,5,6 we have two options that we can make available to you-

Option 1-

We guarantee your salaries 100%. Years 4,5,6 your bonus is based on the Broker Bonus plan (which is in force countrywide). A copy is attached. In essence we would pay you 45% of revenues less Redacted (your and Redacted fixed costs) less support costs (your additional support salaries and support bonus)- any overage would be your bonus. In no event would this number be less than the Redacted that represents your salaries combined. Note that our bonus plan increases the % paid to you to 47.5% once your exceed Redacted and this goes back to the first dollar. When you break 2MM, this generates immediate and meaningful impact.

12/4/2007



ALL000018

## **Exhibit F**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

---oOo---

CRUMP INSURANCE SERVICES,  
INC.,

Plaintiff,

vs.

MICHAEL P. McGRATH, an  
individual, ALL RISKS, LTD.,  
a corporation, and Does 1  
through 50, inclusive,

Defendants.

**CERTIFIED COPY**

JG Jane GROSSMAN  
RS REPORTING Services

No. C-07-4636 MMC

DEPOSITION OF NICHOLAS DOMINIC CORTEZI, II

June 10, 2008

Taken before JANE GROSSMAN

CSR No. 5225

JANE GROSSMAN REPORTING SERVICES  
Certified Shorthand Reporters  
1939 Harrison Street, Suite 460  
Oakland, California 94612  
(510) 444-4500

DEPOSITION OF NICHOLAS DOMINIC CORTEZI, II

00103

1 what it says.

2 MS. RUTTER: No. That's the allegation, that  
3 she asked.

4 MR. ASKANAS: The allegation she asked?

5 MS. RUTTER: You guys are alleging that  
6 Ms. Marty asked an assistant to download information to  
7 bring to All Risks.

8 MR. ASKANAS: Okay.

9 MS. RUTTER: That's an allegation.  
10 She never testified that --

11 MR. ASKANAS: All right.

12 MS. RUTTER: -- she did that.

13 MR. ASKANAS: Q. Is that your understanding?

14 A. Is what my understanding?

15 Q. That Ms. Marty never asked her assistant to  
16 download information with regard to policy expiration  
17 dates.

18 A. If she --

19 MS. RUTTER: Objection. Vague as to time.

20 MR. ASKANAS: Q. At any time.

21 A. If she did, it would have been in relation to  
22 her role at Crump, correct.

23 Q. If she had brought that information from Crump  
24 to All Risks, would that have been a violation of your  
25 instructions to her?

00104

1 A. Yes.

2 Q. Have you ever spoken to Cynthia Marty about  
3 that?

4 MS. RUTTER: Objection. Vague, ambiguous as  
5 to "about that."

6 MR. ASKANAS: Q. You understand what I  
7 mean --

8 A. I --

9 Q. -- by "about that"?

10 A. I spoke with Cyndi and Mike specifically  
11 before they came on board that they were to leave  
12 everything behind at Crump.

13 Q. Okay. Well, what about -- did you ever speak  
14 to them since the inception of this litigation outside  
15 the presence of counsel?

16 A. Most of the conversations that I've had with  
17 them have been in the presence of counsel. And it's  
18 hard for me to recall which ones may have been outside.

19 But I'll try to answer your question if you'll  
20 ask it again.

21 Q. Okay. The question is, Have you ever  
22 discussed with Cynthia Marty or Mike McGrath since the  
23 inception of this lawsuit whether they brought any  
24 customer-expiration-date lists from Crump to All Risks?

25 A. I believe that I have, yes.

00110

1 expedition.

2 It was -- I don't know that Mike was aware  
3 that I was talking to her at the time or I intended to  
4 talk to her.

5 Q. Did Mike McGrath ever tell you anything about  
6 Cyndi Marty in terms of her compensation at Crump?

7 A. No, not that I can recall.

8 Q. Did Mike McGrath ever tell you anything about  
9 Cynthia Marty in terms of her production abilities?

10 A. Not that I remember.

11 He spoke highly of her as an individual and --  
12 and clearly he thought highly of her.

13 Q. When did he tell you that?

14 A. In conversations that we had along the way  
15 over the course of the past year and a half.

16 Q. Were those -- did you have those conversations  
17 with him before you met Cyndi Marty?

18 A. I don't remember.

19 Q. Did you have those conversations with him  
20 before you called Cyndi Marty?

21 A. I don't remember.

22 Q. Did Mike McGrath tell you anything about  
23 Cyndi Marty in terms of her competency as a producer?

24 A. I don't remember anything specific. Just  
25 clearly he thought highly of her.

00111

1 Q. Did Mike McGrath tell you anything about  
2 Cyndi Marty in terms of her -- of whether he wanted her  
3 as part of his team?

4 A. I'm sorry? Did Mike --

5 Q. McGrath tell you anything about her in terms  
6 of whether he wanted her as part of his team.

7 A. If he joined All Risks?

8 Q. Yes.

9 A. No.

10 Q. Did you have an understanding that if  
11 Cynthia Marty joined you, she would join you as part of  
12 Mike McGrath's team?

13 A. I wasn't certain at the time that we were  
14 going to be able to hire Mike McGrath.

15 I would have been glad to have hired Cyndi if  
16 we were unable to get Mike.

17 So, in the early stages of my discussions with  
18 her, there was no -- there was no preset arrangement  
19 that we had in mind.

20 Q. Did you initiate contact with Cynthia before  
21 you initiated contact with Mike McGrath the second time?

22 I know there was the first time it didn't come  
23 to fruition. Then you picked up discussions.

24 A. I -- I don't remember. It may have been  
25 concurrent.

00112

1 Q. Sir, is it your testimony today that you  
2 would have initiated contact with Cynthia Marty even  
3 if Mike McGrath were not interested in joining you?

4 A. Yes.

5 Q. And why is that?

6 A. Because I had heard through the marketplace  
7 that she's a very talented broker.

8 Q. But you don't recall who you heard that from?

9 A. Probably from a number of people.

10 Q. Can you give me --

11 A. That's her reputation.

12 Q. Can you give me some names?

13 THE VIDEOGRAPHER: You're getting in the  
14 picture.

15 MR. ASKANAS: Sorry about that.

16 THE WITNESS: I don't know that I can give you  
17 specific names. But I can tell you that we were in the  
18 course of -- of interviewing people with Marsh at the  
19 time from San Francisco. And I don't remember their  
20 names, unfortunately. But I think some of them had  
21 worked with Cyndi and recommended her.

22 I can tell you that we talked to a number of  
23 our insurance carriers who operate in this area, and I'm  
24 certain that we heard favorable things from them.

25 MR. ASKANAS: Q. So, was it -- was it just a

00120

1 Q. Now, do you recall participating in this  
2 e-mail chain?

3 A. Yes, somewhat.

4 Q. Okay. Prior to today, when was the last time  
5 you saw this e-mail chain?

6 A. I don't remember. I -- I haven't -- I haven't  
7 looked at this in a long time.

8 Q. Is it fair to say -- I'm just trying to  
9 refresh your recollection.

10 Have you looked at it since the inception of  
11 this litigation?

12 A. I don't believe I've reviewed it, no.

13 Q. Okay. Now, the question I asked you was, Did  
14 Mike McGrath ask you -- I'm sorry.

15 Did you ask Mike McGrath to help arrange a  
16 meeting with Cynthia Marty?

17 A. No.

18 Q. Can you tell me how this dinner came to be?

19 A. I called -- as I recall, I called Mike and  
20 invited him to dinner. We were in discussions with him.

21 And I called Cyndi and invited her to dinner.

22 We were in discussions with her at that point, and she  
23 seemed interested.

24 Q. And is it your testimony that at that time  
25 when you invited both these people to dinner, you had

00121

1 not told the other that you were recruiting them both?

2 A. At the point of invitation?

3 Q. Yes.

4 A. I can't remember at what stage I told them

5 specifically. I don't know that when I set it up I had

6 told them.

7 But at some stage, I certainly would have

8 shared with them that the other was going to be there.

9 I just don't remember when that happened.

10 Q. Well, Cynthia Marty testified that she was

11 surprised and shocked to see Mike McGrath at dinner.

12 Do you see that?

13 MS. RUTTER: Objection to the extent it

14 misstates her testimony.

15 THE WITNESS: Could I -- could I see it?

16 I don't remember reading that.

17 MR. ASKANAS: Q. Is it your testimony today

18 that, in fact, you did tell her in advance that she was

19 going -- that Mike Duffy (sic) was going to be -- excuse

20 me -- Mike McGrath was going to be at the dinner?

21 A. My testimony is I can't remember exactly when

22 it was that I shared it with them, but I thought it was

23 in advance of the dinner.

24 Q. Let me ask you this: When did you first ask

25 -- when did you first tell Mike McGrath that you were

00133

1 A. No, I don't remember asking him specifically  
2 for his revenues.

3 Q. Did Mr. McGrath tell you that you had to hire  
4 Marty if you wanted to hire him?

5 A. No.

6 Q. When did you understand that Mr. McGrath and  
7 Ms. Marty worked together at Crump in that  
8 partnership-type relationship?

9 A. At some point over the four to six months  
10 preceding the date at which they joined us.

11 Q. Mr. McGrath's e-mail to you -- I'm looking at  
12 the bottom of page -19 on the Bates stamp.

13 A. Okay.

14 Q. And this was his response to your last e-mail.

15 "Nick:

16 "Thought it would be easier to see in  
17 writing what we would be talking about for  
18 us to consider a move."

19 Do you see that?

20 A. Yes.

21 Q. Do you know what he meant by "us"?

22 A. I don't know. I don't know.

23 Q. He says:

24 "Thanks again for dinner; we both had a  
25 good time."

00134

1 Do you know what he means by "we"?

2 A. This -- this was -- well, I don't know.

3 What was the date of the dinner?

4 Q. Well, the dinner --

5 A. Was this before --

6 Q. It seems to set it up on May 16th.

7 I don't know when the dinner was. It just

8 says -- the first e-mail was:

9 "Good to go with...at Cosmo's on the

10 16th -- 6ish (sic)."

11 A. So --

12 Q. And then you respond:

13 "Looking forward to dinner..."

14 And then this response on May 22nd:

15 "Thanks again for dinner; we...had a good

16 time" -- "we both had a good time."

17 A. So, this would have been after having dinner

18 with the two of them.

19 I'm not sure exactly what it referred to.

20 Q. "The two of them" meant Cynthia Marty and

21 Mike McGrath; correct?

22 A. Yes.

23 Q. It says:

24 "As mentioned earlier we are set and

25 comfortable for a minimum (sic) of 5 to

00136

1 Q. At this time did you know how much  
2 Mike McGrath was earning at All Risks (sic)?

3 A. At Crump?

4 Q. At Crump. I'm sorry.

5 A. I'm -- I'm guessing he had told me --

6 MS. RUTTER: Well, we don't want you to guess.

7 THE WITNESS: I'm sorry.

8 MS. RUTTER: Nobody wants you to guess.

9 THE WITNESS: At some point in or around  
10 there I became aware of what Mike was making based on  
11 conversations with him. It may have been concurrent  
12 with this; it may have been prior to this (indicating  
13 document). But it would have been either concurrent  
14 with this or prior to.

15 MR. ASKANAS: Q. He would have told you,  
16 correct, at some point?

17 A. Yes.

18 Q. Okay. At some point did you have an  
19 understanding as to what Cynthia Marty was earning at  
20 Crump?

21 A. Yes.

22 Q. And how did you come to that understanding?

23 A. I asked her.

24 Q. When did you ask her?

25 A. I believe it was on the telephone. It may

00137

1 have been after dinner with Mike. It probably was

2 shortly thereafter.

3 Q. It would have been shortly after the dinner

4 that you had at Cosmos -- the three of you?

5 A. I believe so, yes.

6 Q. So, you -- your testimony today is you did not

7 have any discussion with her at that dinner or

8 beforehand about what her compensation was?

9 A. I can't remember if we discussed her

10 compensation level in the conversations that we had in

11 advance of that dinner or not.

12 Q. Did you know --

13 A. We may well have.

14 Q. Did you know Mike -- did you know

15 Mike McGrath's compensation in advance of that dinner?

16 A. Approximately, yes.

17 Q. Okay. I mean, knowing what the person's level

18 of compensation was would be something important in

19 determining whether you wanted to recruit them; correct?

20 A. We would assume that their compensation level

21 would be reflective of their role in the industry. And

22 the -- in general, most brokerage operations pay in and

23 around the same structure.

24 We were familiar with Crump's compensation

25 model. It's fairly well known in the insurance

00138

1 industry.

2 So, I think we would have gone in with the

3 ability to meet their financial needs being really not

4 our concern.

5 Q. So -- so, is it your testimony that you had  
6 done some maybe back-of-the-envelope -- I don't want to  
7 say that. That's not your testimony.

8 But had you done some back-of-the --  
9 back-of-the-envelope calculations as to what you thought  
10 Cynthia Marty and Mike McGrath were earning prior to  
11 meeting with them at dinner?

12 A. I don't remember doing those calculations, no.  
13 It may have been a sort of mental arithmetic.  
14 They'd be in this range, between here and here, but...

15 Q. But you -- but you'd had those discussions  
16 before the dinner specifically with regard to  
17 Mike McGrath in terms of his compensation?

18 A. Over the course of several years.

19 Q. But you don't recall having those  
20 conversations with Cyndi Marty prior to the dinner?

21 MS. RUTTER: Objection. Asked and answered.

22 THE WITNESS: I don't remember whether we  
23 discussed her compensation level in the conversations  
24 leading up to the dinner or after the dinner. I  
25 remember getting a sense of where she was from her

00139

1 telling me, but I don't remember whether it was before  
2 or after the dinner.

3 MR. ASKANAS: Q. Was it your impression that  
4 both Cyndi and Marty (sic) knew that they would be at  
5 the dinner together?

6 A. Cyndi and Mike?

7 Q. Mike, yes.

8 MS. RUTTER: Objection. Vague, ambiguous,  
9 calls for speculation.

10 THE WITNESS: I don't know.

11 I -- I -- looking back on it, I'm fairly -- I  
12 thought that I had a specific discussion with them that  
13 we were coming together at the dinner --

14 MR. ASKANAS: Q. I mean, did they say --

15 A. -- shortly before, because I wouldn't have  
16 wanted to ambush them and just have them run into one  
17 another.

18 Q. So, you don't recall any sort of like, "Wow, I  
19 didn't expect to see you here" type, you know, exchange  
20 between them?

21 A. I don't remember whether or not that exchange  
22 took place or not.

23 Q. The -- the note from you (sic) goes on to say:  
24 "Our main point besides salary is a  
25 commitment for 6 years. Based on our

Jose Brasonar

156

**Exhibit G**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRUMP INSURANCE SERVICES, INC.,

Plaintiff,

vs.

No. C-07-4636 MMC

MICHAEL P. MCGRATH, an individual,  
ALL RISKS, LTD., a corporation,  
and Does 1 through 50, inclusive,

Defendants.

CERTIFIED  
COPY

---

VIDEOTAPED DEPOSITION OF CYNTHIA MARTY

San Francisco, California

Wednesday, April 30, 2008

Reported by:

SUZANNE F. BOSCHETTI

CSR No. 5111

Job No. 85930B

00018

1 VIDEO OPERATOR: Thank you, thank you.

2 BY MR. STERN:

3 Q. When had you first learned that there might be  
4 an opportunity for you at All Risks?

5 A. Early part of June.

6 Q. June 2007?

7 A. Yes.

8 Q. And what is it you learned at that point in  
9 time?

10 A. I -- that Nick -- I -- that Nick was looking to  
11 open an office out here, and he wanted -- learned of my  
12 name, someone in the industry out here, and he wanted to  
13 talk to me.

14 Q. Did he say how he learned of your name?

15 A. No.

16 Q. Did he say anything that led you to believe  
17 that Mike McGrath had given your name?

18 A. No.

19 Q. Did you ever find out how Nick Cortezi knew of  
20 you?

21 A. No. He nev- -- no. I never -- never did.

22 Q. Who first contacted you? Mr. Cortezi?

23 A. Yes.

24 Q. And how did he contact you?

25 A. By telephone.

00019

1 Q. And when was that? Early June, you say?

2 A. I think -- no, it wouldn't have been early

3 June. It would have been early May. I'm sorry.

4 Q. Okay.

5 A. It would have been the early part of May.

6 My -- my apologies.

7 Q. So when you said early June --

8 A. That was incorrect, yes.

9 Q. Okay. So early May, you received a phone  
10 call --

11 A. Yes.

12 Q. -- to you at home?

13 A. In the office.

14 Q. Just, as far as you could tell, out of the  
15 blue?

16 A. Yes.

17 Q. Did you ask him how he located you --

18 A. No.

19 Q. -- how he heard of you?

20 A. No.

21 Q. Were you surprised?

22 A. I get headhunter calls all the time, so it's  
23 just like okay. Just here's another one. And then I  
24 didn't even realize till later in the conversation that  
25 he -- he was the principal, that it wasn't a headhunter

00022

1 to me. At least in our conversations, he was.

2 Q. Did you tell anyone about either of these phone  
3 conversations?

4 A. I did mention it to Mike. I said --

5 Q. Mike McGrath?

6 A. Mike McGrath. Yeah.

7 Usually when we get these calls from

8 headhunters, we would just mention it to each other.

9 And I'd say, okay, Mike, you're going to love this one.

10 I just got a call from someone I've never even heard of

11 before. I said, some company by the name of All Risks.

12 I wasn't even sure at that point if it was a

13 headhunter or a company.

14 And he says, well, what are you going to do?

15 I said, I don't know. I said, probably talk to

16 the guy. I always like to keep my interview skills up.

17 Q. Had you previously, when contacted by

18 headhunters or people that seemed to be interested in

19 maybe giving you a job, met with them on occasion?

20 A. On occasion, yes.

21 Q. Okay.

22 A. Yes.

23 Q. Did Mike say anything else about --

24 A. No.

25 Q. -- this Nick fellow or All Risks or anything?

00023

1 A. No.

2 Q. Did he comment in any respect?

3 A. Not that I can remember.

4 Q. Okay. So he just really asked, what are you  
5 going to do?

6 A. Mm-hmm. Yeah. That -- that's it. Yeah,  
7 pretty much.

8 Q. And what did you tell him in response to the  
9 specific query, that you thought you'd meet with this  
10 person?

11 A. Tell who?

12 Q. I'm sorry.

13 What did you tell Mike McGrath when you  
14 mentioned to him that you got this call from this fellow  
15 at All Risks and he said, well, what are you going to  
16 do? You responded --

17 A. At that point I wasn't too sure, but, you know,  
18 probably meet with him.

19 Q. And did he encourage you to do that or say  
20 anything further?

21 A. No. He goes, okay. Pretty much.

22 Q. Looking at the calendar, does it jog your  
23 memory as to when either of these phone calls with Nick  
24 took place in May 2007?

25 A. The early part. That's all I can remember is

00025

1 A. After the first.

2 Q. Okay. So we have a first call, what you said

3 to Mike McGrath --

4 A. Yes.

5 Q. -- in a conversation, and then the second

6 call --

7 A. Yes.

8 Q. -- where you indicated to -- to Nick you'd meet

9 with him.

10 A. Yes.

11 Q. And did he at that time set up a specific

12 appointment?

13 A. Not at that time, no, that I -- no.

14 Q. How was it handled then? He called you. Said

15 he'd be in town to meet. You indicated you would.

16 A. Yeah.

17 Q. What took place?

18 A. I can't remember exactly. We ended up going to

19 dinner sometime in the middle of May. I'm not sure the

20 exact date, but sometime in the middle of May we went to

21 dinner.

22 Q. Where?

23 A. Cosmo's, Cosmopolitan Cafe.

24 Q. Do you know what table number you sat at?

25 A. I wish I did.

00026

1 Q. Nice table?

2 A. By a window.

3 Q. 4.

4 A. There really is a table number there?

5 MS. RUTTER: We learned something.

6 BY MR. STERN:

7 Q. So in that second call, did he tell you the  
8 date he was coming to San Francisco?

9 A. He must have because we had a dinner set up,  
10 so --

11 Q. Was the dinner set up during this second call?

12 A. You know what, I don't remember.

13 Q. Okay. So he might have called back?

14 A. Yeah, or -- yeah. I don't remember. I'm  
15 sorry.

16 Q. But one way or another, in the next few days  
17 anyway --

18 A. Yes.

19 Q. -- you got a dinner set up with Nick Cortezi?

20 A. Yes.

21 Q. And after the second call, did you have any  
22 communication with Mike McGrath about the fact that you  
23 had set up this dinner?

24 A. Not that I recall.

25 Q. Did Nick indicate that he just wanted to meet

00027

1 with you when you had dinner?

2 A. That I -- I think -- I'm pretty sure, yes.

3 Q. And is that what happened?

4 A. No.

5 Q. What happened?

6 A. When we -- I went to dinner. Mike actually was  
7 there at the -- was there or was going at the same time.

8 Q. Mike McGrath?

9 A. Mike McGrath that day. Yeah. And he said, you  
10 know, we're -- I'm having dinner with Nick tonight, and  
11 I said so am I.

12 I think we might have -- gosh. I'm trying to  
13 remember. I might have -- an e-mail or something. God,  
14 what happened? I'm sorry. I don't remember exactly how  
15 it was.

16 Q. When was it you first learned that it was not  
17 going to be you and Nick for dinner, but it would be  
18 you, Nick and Mike McGrath?

19 A. I don't know if it was -- I don't think it was  
20 the exact date of the dinner, but it wasn't too much  
21 prior to that.

22 Q. And who was it who told you that it would be  
23 the three of you and --

24 A. You know, I don't -- I don't remember. It  
25 could have been Nick, and it could have been Mike. I'm

00036

1 but he -- at the time that we spoke, he'd had a company  
2 already that he wanted to start the brokerage end of.

3 Q. There was an All Risks office in the  
4 San Francisco area --

5 A. Yes.

6 Q. -- right?

7 Where was it located? Did you know or did he  
8 tell you?

9 A. I didn't know then, no.

10 Q. And did he discuss at all where you might fit  
11 in if you went over to All Risks?

12 A. He wanted me to be a senior property broker.

13 Q. Did he indicate whether he would have interest  
14 in you alone?

15 A. I'm not --

16 Q. Yeah, let me clarify. Mike was there. Mike --

17 A. Right.

18 Q. -- was your supervisor.

19 A. Right.

20 Q. Did he indicate whether or not he would be  
21 interested in you even if Mike didn't go over?

22 A. That was my impression.

23 Q. So that --

24 A. Yeah, that he wanted --

25 Q. The -- the opportunity was for you alone or

00037

1 both of you?

2 A. Yes.

3 Q. But it wasn't necessarily only you would be  
4 included only if Mike went?

5 A. Oh, no. No.

6 Q. Okay. What did he say along the lines of what  
7 opportunity there was for you?

8 A. That it was a startup, that just the growth was  
9 there.

10 Q. Was there any questioning of him with respect  
11 to whether or not there was a job for you if Mike didn't  
12 go or vice versa, there was a job for Mike even if you  
13 didn't go?

14 A. No.

15 Q. So nobody -- nobody asked the question of --

16 A. No.

17 Q. -- what he had in mind in terms of whether he  
18 was looking for both of you?

19 A. No.

20 Q. What, if anything, did Mike say during that  
21 dinner?

22 A. Very little that I recall. I think Nick did  
23 most of the talking. I don't think I said very much,  
24 either.

25 Q. Did -- was there any discussion about how much

00042

1 Did you ever learn that Mike had given him your  
2 name?

3 A. No.

4 Q. Did you ever learn that before that dinner at  
5 Cosmo that Mike had had a number of meetings with Nick  
6 Cortezi?

7 A. No.

8 MS. RUTTER: Objection to the extent it lacks  
9 foundation, to the extent it misstates --

10 BY MR. STERN:

11 Q. Did --

12 MS. RUTTER: -- her testimony.

13 BY MR. STERN:

14 Q. Did you ever learn that Mike had been back to  
15 the All Risks office in the Baltimore area before you  
16 had that Cosmo meeting?

17 A. No.

18 Q. Okay. Did Mike ever tell you for how long he  
19 had been at least aware of All Risks or courted by All  
20 Risks in terms of possibly joining them?

21 A. No.

22 Q. Before you accepted your job at All Risks, did  
23 you go back to their office in Baltimore?

24 A. No.

25 Q. You've been back since, haven't you?

00043

1           A.   Not -- no.

2           Q.   Oh.

3           A.   No.   I've been to Baltimore for a meeting, but  
4   I've never been to the All Risks offices.

5           Q.   Other than Nick Cortezi, did you deal with  
6   anybody else at All Risks up till the time you actually  
7   accepted your employment there?

8           A.   No.

9           Q.   Did you and Mike discuss that dinner you had  
10   had with Nick after you had the dinner?

11          A.   Yes.

12          Q.   What did you discuss?

13          A.   I confirmed with him that this was something  
14   that, you know -- that he was, you know -- that he was  
15   thinking about this too, you know, just what was going  
16   on, and that's pretty much it.

17                I said -- you know, I said I didn't want any  
18   misreads on the same thing.  You know, you could have  
19   let me know, though, just what was going on.  I would  
20   have appreciated it.

21               And he said, no, I -- he couldn't do that.

22          Q.   Why?

23          A.   Because I asked him -- I said, you could have  
24   let me -- I did -- I did say that.  I said, you could  
25   have let me know what was going on here.

00044

1           He says, nope. You have to make your own  
2   decisions on this.

3           Because we were just walking back -- I was  
4   walking back to BART.

5           Q. After the dinner?

6           A. After dinner, yeah.

7           Q. Excuse me. And as best you recall, I know  
8   we -- the document didn't refresh your recollection that  
9   it was May 16th.

10           When do you believe it was in May? Can you  
11   give me a time frame or narrow it down?.

12           A. I know it was -- I figured it has to be the  
13   middle of May because it was before Mike went on  
14   vacation. He had a vacation the end of June. It was  
15   before then. But the exact date or time, I just -- I'd  
16   have to look at my calendar to know that, but I don't  
17   rem- -- just middle of May is all I remember.

18           Q. Okay. And after -- after the dinner, how were  
19   things left with Nick coming out of that dinner?

20           A. He was -- as far as I was concerned, he said he  
21   was going to go back and work up something and put it  
22   before me, and then just see what I thought of it.

23           Q. Had you provided him any information either at  
24   the dinner or before or shortly after it with respect to  
25   what you would be interested in in terms of a salary or

00046

1 Q. About how soon after your dinner at Cosmo did  
2 you get a proposal from Nick?

3 A. It was -- if I'm remembering correctly, it was  
4 at least a week afterwards, but I don't know the dates  
5 on that.

6 Q. When you had this dinner, I gather that it was  
7 left that a package -- a proposal, should I say, would  
8 be provided to you.

9 Was there anything of a similar nature that was  
10 to be provided to Mike?

11 A. Not that was discussed there.

12 Q. Okay. So you didn't know whether or not a  
13 proposal was going to be made to him as well?

14 A. No.

15 Q. Did you ever learn -- prior to when Mike  
16 McGrath got back from Hawaii, did you ever learn that a  
17 proposal had been made to him as well?

18 A. Prior to him getting back from Hawaii? No.

19 Q. Okay. So he didn't call you right before he  
20 left for Hawaii and tell you that he had gotten a  
21 proposal?

22 A. Not that I recall, no.

23 Q. And so you got a proposal after this dinner,  
24 and about when do you think it was? You said I thought  
25 about a week after the --

00047

1 A. I'm thinking it was about a week afterwards. I  
2 think so.

3 Q. And what did you do once you got the proposal?

4 A. I read through it and thought, wow, this is  
5 pretty nice, and just thought about it because Mike was  
6 getting ready to take off on vacation. So I didn't get  
7 a chance to talk to him or find out anything like that.

8 Q. So you think you got your proposal before Mike  
9 had left?

10 A. I have no idea.

11 Q. Did you along the way talk to Mike about your  
12 proposal before you accepted it?

13 A. No.

14 Q. Never?

15 A. Not that I -- no. I was -- it was a nice  
16 just if it was nice. It was nice.

17 Q. When did you decide you were going to accept  
18 the All Risks employment proposal?

19 A. It was probably -- it was while Mike was in  
20 Hawaii. I thought I got to let him know when he's  
21 getting back that I'm going to do this.

22 Q. So you made the decision to leave Crump without  
23 knowing that Mike was going to leave Crump?

24 A. Yes. I wasn't sure. I had no idea what he was  
25 doing. No idea.

00048

1 Q. Did you -- did you tell anyone that you had  
2 made the decision to go to All Risks after you made that  
3 decision?

4 A. No.

5 Q. Ultimately you told Peter?

6 A. Right. Well, I told Mike, when -- Mike called  
7 me when he got back from Hawaii on Sunday, that he was  
8 going to accept -- he had received -- that he was going  
9 to accept the offer and go to All Risks.

10 And I said that's a relief because that's the  
11 decision I came to because I can't afford to turn this  
12 deal down.

13 That was on -- when he got back from Hawaii he  
14 called.

15 Q. You say Sunday. Based on looking at the  
16 calendar, are you able to tell me what Sunday it was?  
17 And I'll just point out that Sunday -- the last two  
18 Sundays in May are the 20th and May 27th. Then we have  
19 Sunday, June 3rd, June 10th and 17th.

20 A. I -- I know that I went in on that date. It  
21 was the day -- it was June 3rd that I talked to him  
22 because I know I went in on the 4th and gave Peter. So  
23 it was June 3rd is when I talked to him.

24 Q. You talked with Mike McGrath on June 3rd?

25 A. On Sunday, yes.

00065

1 East Coast.

2 Q. And then you went into work --

3 A. Yeah.

4 Q. -- and gave notice so --

5 A. Yeah.

6 Q. -- essentially one right after the other?

7 A. Yes, yes.

8 Q. And did you tell All Risks when you would  
9 start?

10 A. I said that I was going to give Crump as much  
11 notice as I needed to.

12 Q. And what did Nick say?

13 A. He said that -- what work -- whatever worked  
14 for me he would support.

15 Q. So you accepted a job, but didn't say when  
16 you'd start?

17 A. I said I was hoping that it would be in two  
18 weeks, but I was going to work with them.

19 At that point I knew Mike was leaving, and they  
20 were behind the eight ball, and there was a huge Marsh  
21 book renewal, and I wasn't going to leave my former  
22 clients in the lurch. That wasn't going to happen. It  
23 was just -- you know, I told Mike -- I said I need to  
24 find out what's going on with -- with my clients.

25 Q. So you told Peter Monday, came back Tuesday,

00066

1 said you're still --

2 A. Mm-hmm.

3 Q. -- of the same mind. Told by Peter and Glen,

4 think it over, we'll give you two weeks to --

5 A. Yes.

6 Q. -- think about it, and then if you're still of

7 that mind, you can give your notice --

8 A. Yes.

9 Q. -- and that's what you did.

10 A. Absolutely.

11 Q. So you kept coming to work through the 15th?

12 A. Yes. Through the whole month.

13 Q. And when did you give notice, in essence, that

14 I really mean it, I'm out of here?

15 A. Peter wouldn't accept it until the 15th.

16 Q. Okay.

17 A. And that was --

18 Q. June 15th, which was a Friday?

19 A. Yes.

20 Q. So on June 15th did you then tell him, Peter,

21 I'm out of here at the end of the month?

22 A. Right. I said, here's my letter. Are you

23 going to take it now? What do you want to do?

24 And he's says, yeah, I guess I have to and, you

25 know, we'll just work through.

00067

1 Q. So you continued throughout the month of June,

2 worked at Crump --

3 A. Yes.

4 Q. -- doing what you'd been doing?

5 A. Yes.

6 Q. During the time that -- now, Mike had left,

7 right?

8 A. Yes.

9 Q. Do you know anything about the circumstances

10 under which he left?

11 A. No.

12 Q. Did he tell you why he -- when did he leave?

13 A. He wasn't there when I got there. He was

14 already gone, according to Peter, that --

15 Q. June 4th?

16 A. Yeah.

17 Q. Did Mike ever tell you what happened such that

18 he was out of there June 4th?

19 A. I knew he was gone that day, yeah, but Mike --

20 no, I didn't talk to him that day. Well, that's not

21 true. I did talk to him that day telling him that I was

22 going to go home and think about stuff, that I owed

23 Peter that.

24 Q. Okay. Up till today, has Mike ever told you

25 the circumstances under when he left on June 4th?

00068

1 A. No. Uh-uh. I don't know.

2 Q. So while he was working at All Risks from  
3 June 4th on -- correct?

4 A. Yes.

5 Q. -- and at least for the month of June, you were  
6 still at Crump, correct?

7 A. Yes, I was.

8 Q. Did you have any communications with him during  
9 that month?

10 A. He would call occasionally to make sure I was  
11 doing okay.

12 Q. And did he ask you anything about any specific  
13 business?

14 A. Not at all.

15 Q. Did he ask you to provide him any information  
16 about any of the accounts, customers, anything like  
17 that?

18 A. Absolutely not.

19 Q. And then at the end of the month of June 2007,  
20 you left Crump.

21 And did you go immediately to All Risks or take  
22 time off?

23 A. The following Monday I started.

24 Q. So just moved from one job right to the next --

25 A. Yes.

00069

1 Q. -- without even --

2 A. Yeah.

3 Q. Next time take a week or two.

4 A. Yeah.

5 MS. RUTTER: Go to Europe.

6 THE WITNESS: And the worst thing was it was my  
7 birthday, too.

8 BY MR. STERN:

9 Q. Oh, that's terrible.

10 A. That's how I remember that date.

11 Q. Okay. No more chitchat.

12 In this whole situation dealing with you  
13 leaving Crump -- well, you being, in essence, courted by  
14 Nick Cortezi to go to All Risks and then ultimately  
15 making the decision, during that whole period, did you  
16 ever have any conversation with Mike about whether it's  
17 a good idea to do this? Gee, should I do this? What do  
18 you think? Anything along that line?

19 A. No. I -- I would make my own -- I make my own  
20 decisions on my career. I can't -- I trust people, but  
21 I don't trust them to make my decisions. I -- and I  
22 don't want to be able to blame someone for making a bad  
23 decision either.

24 This was a scary move. It was a startup, but  
25 it was just -- it was exciting to me.

00070

1 Q. Why?

2 A. It just -- starting something from scratch

3 after being in the business for close to 20 years,

4 thinking I can go start something new and see if -- see

5 if I can really do it without it actually being me doing

6 it, my own money doing it.

7 Q. Did -- did Mike McGrath ever attempt to get any

8 other employee of Crump to go over to All Risks?

9 A. Not that I'm aware of.

10 Q. Do you know if he had any contact with any

11 employees of Crump in the -- in the weeks or couple of

12 months after he left?

13 A. Not -- I don't know.

14 Q. Did you ever ask him whether he had any

15 interest in trying to bring anyone else over to All

16 Risks?

17 A. No.

18 Q. Did Mike ever tell you that he had any records

19 from Crump that he still had in his possession?

20 A. No.

21 Q. Did he ever indicate to you whether he had

22 deleted any information off of his computer, his home

23 computer?

24 A. No.

25 Q. Crump information.

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:


3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to  
12 the original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review of  
14 the transcript [☒] was [ ] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: MAY 13 2008

22  
23   
24 SUZANNE F. BOSCHETTI  
25 CSR No. 5111